

STATE OF HAWAII
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**2005 Regular Session
Senate Majority Office**

FOREWORD

This publication, prepared by the Senate Majority Office, answers frequently asked questions about selected major bills and resolutions passed by the Twenty-Third Legislature of the State of Hawaii during the recently completed Regular Session of 2005.

This edition of Legislative Action Briefs supplements the 2005 Legislative Accomplishments that was recently published by this office. Users are referred to the actual measures and accompanying committee reports for details. Where applicable, Act numbers as of June 1, 2005, have been inserted.

Both the Legislative Action Briefs and the Legislative Accomplishments can be found on the Senate Majority Caucus Website at <http://www.capitol.hawaii.gov/senmaj/>; click on "Legislative Accomplishments" at the top of the page and scroll down to 2005 edition.

Senate Majority Office
June 2005

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LEGISLATIVE ACTION BRIEF

AFFORDABLE HOUSING

Q. *Rising home sales and rental prices and a lack of housing inventory are making it increasingly difficult for Hawaii's residents to secure affordable housing. What action did the Legislature take to address this problem?*

A. The Legislature recognizes that there is no single solution to the affordable housing shortage in the State and took a multi-pronged approach towards facilitating and encouraging the development of more affordable housing units. **SB179, SD3, HD2, CD1**, among other things: (1) grants the counties flexibility to adopt land use density provisions that encourage the development of affordable rental housing; (2) authorizes tax incentives, including a general excise tax exemption for developers of affordable rental housing, a conveyance tax exemption for documents conveying real property to developers of low-income housing, and an increase in the low-income housing tax credit; (3) facilitates use of the Rental Housing Trust Fund (RHTF) by: (a) relaxing affordability requirements and underwriting criteria; (b) allowing use of the RHTF for loans and grants; (c) expanding the pool of eligible RHTF applicants to include corporations, limited liability companies, and partnerships; and (d) abolishing the RHTF Advisory Commission to eliminate duplicative review processes; (4) authorizes use of the Dwelling Unit Revolving Fund for permanent primary or secondary financing; (5) declares a two-year moratorium on the demolition of decommissioned public housing projects and authorizes the offer of decommissioned housing to nonprofits or government agencies for rehabilitation into emergency or transitional homeless shelters or affordable rental housing; (6) effective July 1, 2006, establishes the Hawaii Housing Finance and Development Administration to administer the State's housing development and financing programs; and (7) establishes a joint legislative housing and homeless task force to further identify near-term solutions to Hawaii's affordable housing and homeless problem.

Q. *With the median sales price for a single-family home in Hawaii rising to \$550,000 as of March 2005, the price of buying a home has become out of reach for many of the State's working families. What has the Legislature done to enable the development of affordable homes that Hawaii's workforce will be able to purchase?*

A. Since the United States Supreme Court upheld the constitutionality of the Hawaii Land Reform Act (Act), which establishes a process for the mandatory conversion of leased fee interests in real property, the development and sale of single-family and multi-family housing on a leasehold basis has ceased for all practical purposes in the State. While homes held in fee simple may be

preferable to homes built on leased land, the latter is more affordable for low and moderate income families because high land costs are a major factor in the high cost of housing. A measure passed by the Legislature this session is intended to facilitate the development and preservation of affordable leasehold housing and make homeownership a reality for Hawaii's workforce by exempting land held under a "sustainable affordable lease" from being taken by the State under its power of eminent domain and offered for sale to lessees **(HB931, HD2, SD2, CD1)**.

A "sustainable affordable lease" under the above measure means a residential lot lease in a sustainable affordable development that: (1) provides for a consideration to the fee owner below a fair market return on the fair market value of the land; provided that compensation to the fee owner for land, including lease rent, is either totally capitalized into the initial sales price for the residential lot, including improvements, or partially capitalized with a share of appreciation paid upon resale of the residential lot; (2) limits the lessee's maximum sales price on the residential lot upon resale, including all buildings and improvements, to the lesser of: (a) the fair market value of the residential lot, including all buildings and improvements, encumbered by the restrictions of the lease; or (b) the sum of: (i) the lessee's purchase price for the residential lot, including all buildings and improvements; (ii) any appreciation on the residential lot, including all buildings and improvements as measured by multiplying the amount in clause (i) by the increase in the consumer price index for all urban consumers as determined by the United States Department of Labor for the applicable county (or if not published for the county, then for the State), from the date of the purchase to the date of the contract for resale; and (iii) the fair market value of all lessor-approved capital improvements made by the lessee; and (3) allows the lessor to receive a share of the appreciation in accordance with paragraph (2), as agreed to by the lessor and lessee, and as set forth in the sustainable affordable lease.

A "sustainable affordable development" is a development in which: (1) the sales price at the time of the initial sale of at least 30% of all the residential lots in the development tract are limited in accordance with directly applicable state or county law, regulation, policy, or agreement, such that households earning not more than the required percentages of the median income for the applicable county (according to the directly applicable law, regulation, policy or agreement) will be required to spend no more than the allowable percentage of their gross incomes for housing costs as determined by secondary mortgage market standards or as otherwise agreed, all as determined as of the time of the initial sale of the residential lots; and (2) the sales price at the time of the initial sale of at least 51% per cent of the residential lots in the development tract, including the lots subject to the requirements of paragraph (1), and the sales price at the time of a resale of at least 51% of all the residential lots in the development tract, are no higher than 80% of the fair market value of the residential lots in fee at the time of initial sale or resale, as appropriate, including all buildings and improvements, unencumbered by the restrictions of the lease.

AGRICULTURE

Q. *Last year, there were news reports about thieves stealing farm equipment and produce from crops. Is there anything being done to deter this from happening?*

A. Farmers are especially vulnerable to agricultural trespassing and theft because their farms are located in isolated areas with small populations and limited access to law enforcement. Unfortunately, many agricultural products and equipment are stolen and police and prosecutors have a difficult time proving cases against the accused thieves unless someone actually sees the crimes taking place. In the end, the farmers are almost always burdened with the costs to replace, repair, or replant lost goods. This year, the Legislature passed two measures (**HB 1201, HD2, SD2, CD1** and **HB1202, HD2, SD2, CD1**) that will help law enforcement officials combat agricultural thefts and trespassing. Specifically, the offense of theft in the second degree was modified to address the difficulties in trying to assess a value for agricultural products by providing that the theft of agricultural products in excess of twenty-five pounds will constitute theft in the second degree. Also, the Legislature added that possession of agricultural products and livestock without proper documentation will be evidence that the products are or have been stolen, and this evidence may be used in subsequent criminal proceedings. The laws were also changed for agricultural trespassing. The measure now clarifies that a person commits criminal trespass in the second degree if that person enters or remains on agricultural lands without the permission of the person in lawful possession of the land, if the agricultural land is secured; has the appropriate signs; and at the time of entry, has a visible presence of a crop.

Q. *I have been hearing a lot about "important agricultural lands" and how the Legislature is trying to promote agricultural viability in Hawaii. What are "important agricultural lands," and how are they going to be identified?*

A. The Legislature passed a measure (**HB1640, HD3, SD2, CD1**) to protect important agricultural lands in Hawaii. Important agricultural lands (IALs) are those lands that are capable of producing sustained high agricultural yields, those that contribute to the State's economic base and produce agricultural commodities, or those that are needed to promote the expansion of agricultural activities and income for the future. The purpose of identifying IALs is to ensure the long-term availability of agricultural lands for agricultural use to achieve the conservation and protection of agricultural lands, promote diversification of agriculture, increase agricultural self-sufficiency, and assure the availability of agriculturally suitable lands. Thus, initially farmers and landowners with qualifying lands will be able to petition the Land Use Commission to designate their land as an IAL.

Following this initial petition process, each county will evaluate the land in its jurisdiction and identify and recommend specific lands to be considered for designation as an IAL.

Q. *Important agricultural lands (IALs) are an asset to Hawaii, but are there any incentives for farmers and landowners to designate their land as an IAL?*

A. **HB1640** does not specifically provide incentives to promote IALs; however, this measure sets up the framework for developing incentive programs in the near future. Specifically, this measure provides that future legislation will be designed for state and county incentive programs to enhance agricultural viability on IALs, which may include programs like grant assistance, agriculturally friendly real property tax systems and water regulations and policies, tax incentives to offset agricultural operational costs, and programs and mechanisms that promote investments in agricultural businesses or agricultural land protection.

LEGISLATIVE ACTION BRIEF

CAMPAIGN SPENDING REFORM

Q. *Increasing transparency and imposing more accountability on political candidates are often seen as ways of "cleaning up" elections and political campaigns in Hawaii. What steps did the Legislature take to achieve these goals?*

A. The Legislature enacted a comprehensive campaign spending reform measure (**H.B. 1747, HD1, SD1, CD1**) which establishes new restrictions regarding the use of state and county government facilities for fundraising purposes, limits the total amount of contributions from nonresident donors that may be received by a candidate or candidate committee for each reporting period, and limits the ability of state and county contractors to make, promise, or solicit campaign contributions at any time between the execution of the government contract through the completion of the government contract. This measure also clarifies the disposition of campaign contributions in the event the candidate, committee, or individual who receives contributions fails to file a nomination for that election, withdraws, or ceases to be a candidate. This measure expands the electronic filing of reports with the appropriate county clerk or Campaign Spending Commission to include a candidate or candidate committee for State Senate, State House of Representatives, and the Office of Hawaiian Affairs. This measure prohibits the use of campaign contributions to community service, educational, youth, recreational, charitable, scientific, or literary organizations from the date the candidate files nomination papers to the date of the general election. Finally, this measure requires the disclosure of the terms of a loan, including the interest and repayment schedule, made to a candidate.

Q. *Recent news stories have detailed excessive campaign contributions to various elected officials on both the state and county levels by government contractors. What did the Legislature do to address this situation?*

A. The Legislature prohibited both state and county contractors, during any time between the execution of the contract through the completion of the contract, to directly or indirectly make or expressly or impliedly promise to make any contribution to any political party, committee, candidate, or person for any political purpose. This prohibition also extends to knowingly soliciting any contribution from any person for any purpose during this same time period.

A government contractor that falls within the ambit of this prohibition includes any person who enters into any contract with a state or county department or agency for the rendition of personal services, the buying of property, or the

furnishing of materials, supplies, or equipment to the State as well as the selling of any land or building to a state or county department or agency.

Q. A concern voiced by many local residents centers upon the increase in campaign contributions from individuals who do not live here and thus have no tangible stake in the outcome of an election. What steps did the Legislature take to reduce the influence of campaign contributions from nonresident donors?

A. In response to these concerns, the Legislature limited contributions from nonresident donors, including noncandidate committees organized under the laws of another state and whose participants are not residents of Hawaii, to twenty percent of the total contributions received by a candidate or candidate committee for each reporting period.

Q. News stories frequently mention that violators of campaign spending limits are often granted a deferred acceptance of a guilty or no contest plea that allows records of their convictions to be expunged after the passage of certain periods of time. What steps, if any, did the Legislature take to limit the availability of this option to ensure that individuals who knowingly or intentionally violate campaign spending limits are not able to avail themselves of this option?

A. The Legislature tightened eligibility requirements for deferrals by prohibiting the granting of a deferred acceptance of a guilty or no contest plea where a defendant has been charged with knowingly or intentionally falsifying any report required under the contribution and expenditure laws with the intent to circumvent the law or deceive the Campaign Spending Commission. This prohibition also extends to individuals charged with violating the prohibition against making anonymous contributions or making contributions under a false name.

Q. Certain state and county elective offices are eligible for partial public funding. Did the Legislature expand the availability of this public funding option to other elective offices?

A. Yes. The Legislature made candidates for the Office of Hawaiian Affairs eligible to receive \$1,500 in public funds provided these candidates collect \$1,500 in qualifying campaign contributions.

LEGISLATIVE ACTION BRIEF

CONDOMINIUMS

Q. *Last year, the Legislature adopted a partial recodification of the condominium property regimes law. What is the status of the law governing condominiums?*

A. The recodification of the condominium property regimes law begun under Act 164, SLH 2004 (Act 164) was completed in **SB1132, SD2, HD1, CD1 (SB1132)**. While Act 164 established the law's general provisions and requirements relating to condominium management, **SB1132** establishes provisions relating to the: (1) creation, alteration, and termination of condominiums, (2) registration and administration of condominiums; and (3) protection of condominium purchasers, that go into effect on July 1, 2006, concurrently with the repeal of the chapter 514A, HRS, the current condominium property regimes law. Additionally, this measure repeals the prohibition on investment of condominium association funds in certificates of deposit purchased through a securities broker and on the purchase of investment products from out-of-state financial institutions.

Q. *Were there other changes in the law with respect to condominium management and governance?*

A. Yes, several measures were passed that affect rights relating to dispute resolution, condominium association minutes and records, and voting. **SB1345, SD1** establishes that in an administrative adjudication of a condominium management dispute that was previously mediated, the hearing officer may hear any matter that was the subject of mediation. **SB1348, SD1, HD1, CD1** authorizes apartment owners, as an alternative to reviewing board meeting minutes on the project premises, to request and receive within fifteen days of the request's receipt, copies of the minutes by mail, electronic mail, or facsimile, subject to payment of a reasonable administrative fee. **SB1349, SD1, HD1, CD1** requires a condominium association board to make the association's business and financial records available for review by apartment owners for as long as those records are maintained by the association. **SB1798, HD1, CD1** requires condominium association bylaws to require a majority vote of apartment owners to remove and replace an association board director and authorizes cumulative voting if permitted by the bylaws and if notice is given by an owner of the owner's intent to utilize cumulative voting prior to the commencement of voting

The Legislature also adopted **HCR204**, which requests the Auditor to conduct a "sunrise" review and analysis under the Hawaii Regulatory Licensing Reform Act of the regulation of condominium association managers as proposed in SB1454 (2003), and to submit a report to the 2006 Legislature.

COUNTY SURCHARGE FOR TRANSIT PROJECTS

Q. *The history in Hawaii of mass transportation financing by taxation has been one of high hopes and dreams extinguished by failure in implementation. Is there a turning point?*

A. Yes. The Legislature enacted **H.B. No. 1309, HD2, SD2, CD1**, to allow each county to establish by ordinance a county surcharge of up to one-half percent on the general excise tax and use tax. The funding is to be used by the county for mass transit projects or public transportation, depending on the county's population.

Q. *What is the brief history of mass transportation funding?*

A. Act 300, Session Laws of Hawaii (SLH) 1967, enacted chapter 51, Hawaii Revised Statutes (HRS), relating to mass transit, to grant the counties condemnation powers to acquire, condemn, purchase, lease, construct, extend, own, maintain, and operate mass transit systems, including motor buses, street railroads, fixed rail facilities such as monorails or subways, and other forms of mass transit.

Act 183, SLH 1990, enacted chapter 51D, HRS, relating to the transit capital development fund. The fund was intended as a receptacle, in part, for tax monies raised by the counties pursuant to Act 184, SLH 1990, which authorized the counties to establish a general excise and use tax surcharge of one-half percent.

Act 184 recognized the inherent difficulties and disparities in mass transit planning and other funding priorities among the counties by providing that the City and County of Honolulu develop a fixed rail rapid transit system, and the counties of Kauai, Maui, and Hawaii develop public transportation systems, including mass transportation, sewage or water development, and parks, including park operation, maintenance, infrastructure, and purchase.

Act 184 granted the counties that authority until December 31, 2002. Pursuant to that enabling legislation, the Honolulu city council narrowly defeated a measure by a five-to-four vote to pass an ordinance in the early 1990s that would have established the tax. No county adopted an ordinance to enact an excise or use tax surcharge, and the taxing authority was repealed by Act 135, SLH 2003.

Q. *What is the current urgency to pass another mass transit funding bill?*

- A.** The Legislature needs to pass a bill to have a funding mechanism in place to demonstrate to the Federal Transit Administration that Hawaii is serious about constructing a rail mass transit system. Hawaii is competing with the other states to secure federal monies to subsidize the costs of construction of a mass transit system. There are currently two hundred twenty six projects nationwide seeking to have their projects accepted for funding. Hawaii may be able to obtain half of the cost of the system paid with federal monies. H.R. 3, currently progressing in committee in the Congress, authorizes funds for federal-aid highways, safety programs, and transit programs. There is included in that legislation an appropriation for a fixed guideway rapid transit project for Honolulu. It is anticipated that the bill will go to conference committee sometime during the summer months of 2005. If no bill was passed this Session, Hawaii would have lost out on hundreds of millions of dollars in subsidized federal funding for transit.

The daily commute to and from work from West and Central Oahu can amount to a total of three or more hours of sitting in traffic. The Oahu Metropolitan Planning Organization recently conducted a study that found that people on almost half the Island of Oahu will face the prospect of spending eighty minutes or more commuting during the morning rush hour by the year 2030, with many commuters likely seeing their current time double to four hours a day on the road. The Urban Mobility Report (May 2005) of the Texas Transportation Institute, considered the nation's leading center for traffic studies, reported that Honolulu drivers wasted an estimated twenty hours in traffic jams in 2003, up from fourteen hours in 1983.

Q. *What is the estimated cost of a fixed rail mass transit system for Oahu?*

- A.** The costs are projected to be about \$2,000,000,000. Hawaii's Congressional Delegation hopes that up to half of that amount will be financed by federal dollars. While federal law allows up to 80 percent as the federal share, this great a match may not be realistic.

Q. *What are the restrictions on the counties on using the surcharge tax funds ?*

- A.** Each county with a population greater than 500,000 that adopts a county surcharge on state tax ordinance must use the surcharge received from the State for operating or capital costs of a locally preferred alternative for a mass transit project, and expenses thereto in complying with the Americans with Disabilities Act of 1990.

Each county with a population equal to or less than 500,000 that adopts a county surcharge on state tax ordinance must use the surcharge received from the State for operating or capital costs of public transportation within each county for public transportation systems, including public roadways or highways,

public buses, trains, ferries, pedestrian paths or sidewalks, or bicycle paths, and expenses thereto in complying with the Americans with Disabilities Act of 1990.

"Capital costs" are defined as nonrecurring costs required to construct a transit facility or system, including debt service, costs of land acquisition and development, acquiring of rights-of-way, planning, design, and construction, and including equipping and furnishing the facility or system.

Q. *Who will collect the surcharge tax?*

- A.** The tax is to be collected by the State Department of Taxation. All county surcharges on state tax collected by the Director of Taxation will be paid into the state treasury quarterly, within ten working days after collection, and shall be placed by the Director of Finance in special accounts. Out of the revenues generated by county surcharges on state tax paid into each respective state treasury special account, the Director of Finance will deduct ten percent of the gross proceeds of a respective county's surcharge on state tax to reimburse the State for the costs of assessment, collection, and disposition of the county surcharge on state tax incurred by the State. Amounts retained will become general fund realizations of the State.

Q. *Are there any exempt transactions from the surcharge on the general excise tax?*

- A.** No county surcharge on state tax shall be established on any gross income or gross proceeds taxable under the law at the one-half percent tax rate; gross income or gross proceeds taxable at the 0.15 percent tax rate; or transactions, amounts, persons, gross income, or gross proceeds exempt from the excise tax.

Q. *Is there a deadline for the counties to act? If a county does adopt such an ordinance, when does it take effect?*

- A.** A county ordinance must be adopted by December 31, 2005. The surcharge tax takes effect no earlier than January 1, 2007.

Q. *What happens if a county does not adopt an ordinance?*

- A.** If any county does not adopt an ordinance to levy a county surcharge on state tax by December 31, 2005, it is prohibited from adopting such an ordinance, unless otherwise authorized by the Legislature through a separate legislative act. If none of the counties adopt such an ordinance by that date, then the provisions of HB1309 will be repealed.

Q. *If a county does adopt an ordinance, is there a limit on how long the surcharge tax may be assessed and collected ?*

A. Any ordinance adopted will be repealed on December 31, 2022, a period of fifteen years. Federal regulations require a significant period of time for this kind of enabling law in which to show the "stability and reliability of the proposed operating financing plan to fund operation of the entire transit system."

LEGISLATIVE ACTION BRIEF

ENERGY

- Q. *Net energy metering has been touted as a way of supporting alternative energy while reducing dependence upon imported oil. Did the Legislature do anything to support net energy metering during the session?***
- A.** Net energy metering allows customers that generate energy themselves to feed that energy into the electrical system and receive credit for it. The capacity of a customer-generator that can participate in net energy metering has been increased to 50 kilowatts to allow more customers to take advantage of the program. Another incentive for more widespread participation in the program is that credits from one month may be carried over to the next month, until the end of a twelve-month period **(SB1003, SD2, HD2, CD1)**. In order to ensure the safety of customer-generators with a capacity greater than 10 kilowatts, the Public Utilities Commission shall set safety, performance, and reliability standards and requirements for them **(HB606, HD1, SD2, CD1; ACT 69)**.
- Q. *Solar energy is an attractive form of alternative energy, given the amount of sunshine Hawaii receives. Was there anything done during this past session to promote greater use of solar energy technology?***
- A.** Until now, many single-family detached dwellings or townhouses that were governed by condominium laws, covenants, and other agreements, could not install solar energy devices on their property or on common elements or limited common elements. A measure passed by the Legislature will allow an owner whose property is subject to certain restrictions to nonetheless be able to install a solar energy device on that property. For example, an owner of a townhouse would be able to install a solar device on the roof of the townhouse even if the roof is considered a common element of the townhouse complex. The association of apartment owners, community association, or other private entity is required to adopt regulations regarding the placement of the solar devices. The legislation also requires the homeowner to list the private entity as an additional insured on the homeowner policy, and also requires the homeowner to find out whether the installation of the solar energy device on a roof will void any labor or material warranty for the roof. The measure increases the potential for use of solar energy technology in the State **(HB1017, HD3, SD2, CD1)**.

- Q.** *State government itself should lead by example in reducing dependence upon fossil fuels. Did any legislation address the use of alternative fuel sources by the state government?*
- A.** The Legislature has directed that state agencies adopt a policy of obtaining or leasing alternative fuel vehicles, such as hybrid vehicles and electric vehicles. It requires state agencies to procure increasing percentages of alternative fuel vehicles every year. The percentage requirements can be relaxed if an agency can realize improvement in the overall light-duty vehicle fleet mileage economy (**SB1427, SD1, HD2, CD1**).

LEGISLATIVE ACTION BRIEF

ENVIRONMENT

Hawaii's Bottle Bill

- Q. *There have been complaints that the program to recycle beverage containers has been difficult for consumers to participate in because there are not enough redemption centers and reverse vending machines. Did the Legislature do anything to make the recycling program more accessible to Hawaii residents?***
- A.** The Legislature was made aware of the problems faced by consumers trying to recycle beverage containers: the lack of redemption centers and the long lines at each of these. To address these concerns, the Legislature responded by giving an incentive to dealers, such as supermarkets, to provide reverse vending machines. The State may give a rebate of up to \$3,000,000 in total during a fiscal year to be applied against the cost of reverse vending machines purchased **(SB212, SD2, HD2, CD1)**. The same legislation allocates \$3,000,000 towards improving redemption and recycling infrastructure statewide. The monies for the rebates and the infrastructure improvement program may come from the beverage container deposit special fund.
- Q. *Problems have also been reported in the use of reverse vending machines to obtain rebates. Did the Legislature do anything to address issues relating to reverse vending machines?***
- A.** The Department of Health has been directed to develop procedures to facilitate the exchange of information among deposit beverage container manufacturers, distributors, and retailers and certified redemption centers. This information includes Universal Product Code information so that reverse vending machines accept empty containers for redemption **(SB680, SD1, HD1)**. In addition, the reverse vending machine requirements were amended to provide that if the reverse vending machine is unable to read the barcode it will reject the container **(HB1015, HD2, SD1)**.
- Q. *Consumers have also complained that beverage cans cannot be crushed prior to turning them in to the redemption center, and that not being able to do so makes storage of the cans prior to redemption difficult. Was anything done about this?***

- A. The beverage deposit container rebate law was amended so that redemption centers can accept for refund value a flattened deposit beverage container **(HB1015, HD2, SD1)**.

Invasive Species

- Q. ***Invasive species of plants and animals, such as the miconia and the coqui frog, spread rapidly and threaten other species, especially native Hawaiian plant life. What did the Legislature do to combat invasive species?***
- A. The Legislature established, on a permanent basis, the environmental workforce. First established in the wake of the September 11, 2001 national tragedy, the workforce was found to be of great assistance in preventing the introduction and spread of a number of species, including miconia, fire ants, and the coqui frog. The permanent program will be administered by the Research Corporation of the University of Hawaii, which is allowed to provide training and research opportunities in the biological and social sciences to members of the workforce **(SB1554, SD1, HD2, CD1)**. The Legislature also allocated a total of \$300,000 to the counties for coqui frog control or eradication efforts. Maui and Hawaii counties, which bear the greatest burden of coqui frog infestation, were each allocated \$100,000 **(HB1301, HD1, SD2, CD1; Act 51)**.

Ocean Pollution and Activity

- Q. ***Hawaii residents are concerned about maintaining a clean environment, especially for our shoreline and nearshore areas. What has the Legislature done this year to ensure that the environment in and around those areas is clean, safe, and healthy?***
- A. The Legislature made strides in regulating the discharge of untreated sewage, graywater, and other discharges, and certain air emissions from commercial passenger vessels in Hawaiian water. It also requires recordkeeping of discharges or air emissions by the owner or operator of the vessel **(HB422, HD2, SD2, CD1)**. Concerns surfaced about commercial enterprises that have proliferated in recent years off the Waianae Coast. Legislation has placed a moratorium upon the issuance of any new state small boat harbor commercial permits for activity along the Waianae Coast. A baseline environmental study is to be prepared by the Department of Land and Natural Resources from which to adopt rules to manage ocean recreation along the Waianae Coast **(SB1262, SD1, HD2, CD1)**. The Legislature also passed a measure designed to curtail light pollution along the coastline. The measure prohibits artificial light from directly illuminating the shoreline and ocean waters, but makes certain exceptions for hotels and hotel-condos, and government agencies **(HB895, HD2, SD2, CD1)**.

FAMILY COURT; SHARED PARENTING

Q. *In the 2004 legislative session, the Senate adopted Senate Resolution 40. This resolution authorized the Senate Committee on Human Services to convene interim hearings on the Hawaii family court to explore ways to make the court more accessible and family-oriented. The committee filed Senate Special Committee Report No. 2 on January 20, 2005, with its recommendations. One of the most critical recommendations concerned contested custody of children. Did the Legislature respond to this in the 2005 session?*

A. The Legislature passed **SB556, SD2, HD2, CD1**, to improve the family court's ability to provide a fair, speedy, economical, and accessible forum for the resolution of matters involving families and children. Family court cases involve some of the most difficult and emotional issues when it comes to custody of children, particularly where joint custody is concerned. A concept that arose from hearings on SR40 was the fixed shared parenting plan to eliminate high legal fees and to guarantee an age-appropriate visitation schedule for the children. The goal of a parenting plan is to consider the best interests of the child.

Q. *How does SB556 change existing family court procedures?*

A. In contested child custody cases, both parents are required to develop either a mutually agreed-upon general parenting plan or separate individually-desired parenting plan (detailed parenting plan), and to file the plan at the outset of the action.

Q. *What are the requirements of a parenting plan?*

A. A general parenting plan may include a general outline relating to parental responsibilities and parenting time. A general parenting plan may also allow the parents to develop a more detailed agreement on an informal basis.

A detailed parenting plan may include provisions relating to: (1) residential schedule; (2) holiday, birthday, and vacation planning; (3) parental decision-making and responsibility; (4) breastfeeding, if applicable; (5) information sharing and access; (6) relocation of parents; (7) telephone access and other means of communication; (8) right of first refusal procedures; (9) transportation; and (10) methods for changing or enforcing the parenting plan and for resolving disputes.

Q. *What happens if the parents cannot agree on a parenting plan?*

A. If the parties cannot agree on a parenting plan, the court may: (1) order the parties to participate in alternative dispute resolution and in counseling with a person with professional experience in child custody or parenting issues, or with other appropriate education, unless there is a finding of family violence; and (2) develop and file a detailed parenting plan when requested by either of the parties or parents.

Q. *In any event, what new standard for awarding custody is the court allowed to consider?*

A. The court may consider the frequent, continuing, and meaningful contact of each parent with the child unless the court finds that a parent is unable to act in the best interest of the child. "Meaningful contact" is defined as parent and child interactions, activities, and experiences, performed together, which nurture the parent-child attachment and relationship, while contributing to the child's development in a positive and effective manner. Joint custody will be awarded pursuant to the parenting plan in such a way as to assure the child or children of frequent, continuing, and meaningful contact with both parents.

LEGISLATIVE ACTION BRIEF

GRADUATED PROVISIONAL DRIVER LICENSING PROGRAM

Q. *The National Highway Traffic Safety Administration encourages states to implement a graduated driver licensing system. Easing young drivers onto the roadways by controlling their exposure to progressively more difficult driving experiences can reduce the incidence of traffic crashes involving young drivers. Did the Legislature enact such a measure?*

A. Yes. **HB150, HD2, SD2, CD1; Act 72**, establishes a three-stage graduated provisional driver licensing program for persons under the age of 18.

Q. *What is the justification for the Act?*

A. A significant percentage of young drivers are involved in traffic crashes and are twice as likely as adult drivers to be in a fatal crash. Sixteen-year-old drivers have crash rates that are three times higher than 17-year-old drivers and five times greater than 18-year-old drivers. The problems contributing to these higher crash rates include lack of driving experience and inadequate driving skills; excessive speeding during night-time, higher-risk hours; risk-taking behavior; poor judgment and decision-making; drinking and driving; and distractions from teenage passengers.

According to the State Department of Transportation, during a ten-year period between 1994 and 2003, there were 109 fatalities in Hawaii (48 drivers and 61 passengers) in the 15 to 18-year-old age group. During a five-year period between 1999 and 2003, there were 23 fatalities (drivers and passengers) in crashes between the hours of 11 p.m. and 5 p.m. in the 15 to 18-year-old age group. Nationally, according to the National Center for Health Statistics, approximately 36 percent of all deaths for people age 15 to 20 are from motor vehicle crashes. States with night-time driving restrictions show crash reductions of up to 60 percent during restricted hours.

Q. *How many states have enacted a graduated driver licensing program and have these programs been effective?*

A. According to Mothers Against Drunk Driving – Hawaii, 38 states to date have adopted some sort of graduated driver licensing program. The combination of night-time driving restrictions and teen passenger restrictions have saved hundreds of young lives across the country. Crashes involving 16-year-old drivers

have declined 25 percent in Michigan and 27 percent in North Carolina. In Pennsylvania, crashes involving 16-year-old drivers dropped 27 percent while fatalities decreased by 58 percent. Michigan, North Carolina, and Pennsylvania adopted the programs within the last seven years.

Q. *What are the three stages of the graduated license system?*

- A.** The first stage is an instruction permit for persons age 15 years and six months, which is current law. The instruction permit must be held at least 180 days. The second stage is a provisional license for persons at least 16 and less than 18 years of age. The third stage is a driver's license for persons at least 17 but less than 18 years of age.

Q. *What are the restrictions on driving with a provisional license?*

- A.** The provisional licensee must have the provisional license in the provisional licensee's immediate possession while driving. All occupants of the motor vehicle must be restrained by safety belts or a child passenger restraint system as required by statute. The provisional licensee cannot transport more than one person under the age of 18, unless the person is a household member, or a household member's foster or hanai child, without being accompanied and supervised by a licensed driver who is the provisional licensee's parent or guardian. Whenever the provisional licensee is driving between the hours of 11 p.m. and 5 a.m., a licensed driver who is the provisional licensee's parent or guardian and is licensed to operate the same category of motor vehicle as the licensee must be in the motor vehicle and shall occupy the passenger seat beside the licensee.

However, a provisional licensee may drive between the hours of 11 p.m. and 5 a.m. without a licensed parent or guardian in the motor vehicle under the following conditions: (1) the provisional licensee is traveling to or from the provisional licensee's place of employment, operation of the motor vehicle is necessary for this purpose, and the provisional licensee keeps in the provisional licensee's possession a signed statement from the employer containing the employer's name, address, telephone number, and verification of employment and work hours; or (2) the provisional licensee is traveling to or from a school-authorized activity of the provisional licensee, operation of a motor vehicle is necessary for this purpose, and the provisional licensee keeps in the provisional licensee's possession a signed statement from a parent or guardian containing the parent's or guardian's name, address, and telephone number, and verification that operation of the motor vehicle by the provisional licensee is necessary to travel to or from the school-authorized activity. The provisional licensee cannot transport more than one person under the age of 18 between the hours of 11 p.m. and 5 a.m. without being accompanied and supervised by a licensed driver who is the provisional licensee's parent or guardian.

Q. *What are the penalties for violating the restrictions on provisional licenses?*

- A.** The provisional license would be suspended for a period of three months by a district court or family court judge. If the person's provisional license is suspended, the person is not eligible for reissuance of the provisional license or issuance of a driver's license until the person is 18 years of age, or three months have elapsed since the date of suspension, whichever is sooner, and the person has otherwise satisfied the requirements of the Act. For a second or any subsequent violation, the provisional license is revoked for six months by a district court or family court judge. If the person's provisional license is revoked, the person is not eligible for reissuance of the provisional license or issuance of a driver's license until the person is 18 years of age, or six months have elapsed since the date of revocation, whichever is sooner, and the person has otherwise satisfied the requirements of the law to receive a driver's license.

Q. *What are the penalties for violating other traffic laws while holding a provisional license?*

- A.** For a first conviction, the provisional license would be suspended or revoked by a district court or family court judge, in addition to any other penalties that may be prescribed by law. If the person's provisional license is suspended or revoked, the person is not eligible for reissuance of the provisional license or issuance of a driver's license until the person is 18 years of age, or six months have elapsed since the date of suspension or revocation, whichever is sooner, and the person has otherwise satisfied the requirements of the Act. For a second or any subsequent conviction, the provisional license would be revoked for one year by a district court or family court judge, in addition to any other penalties that may be prescribed by law. If the person's provisional license is revoked, the person is not eligible for reissuance of the provisional license or issuance of a driver's license until the person is 18 years of age, or one year has elapsed since the date of revocation, whichever is later, and the person has otherwise satisfied the requirements to receive a driver's license.

Q. *Are there any new restrictions placed upon instruction permit holders?*

- A.** Yes. If the holder of the instruction permit is under the age of 18 years and is driving between the hours of 11:00 p.m. and 5:00 a.m., a licensed driver who is the permit holder's parent or guardian must occupy a passenger seat beside the driver while the motor vehicle is operated, unless the permit holder is an emancipated minor; the licensed driver must be licensed to operate the same category of motor vehicles as the motor vehicle being operated by the holder of the instruction permit; and all occupants of the motor vehicle must be restrained by a seat belt assembly or a child passenger safety restraint system as required by statute.

Q. *When is a provisional license holder eligible to receive a driver's license?*

A. A provisional licensee may be issued a driver's license in accordance with this Act if the provisional licensee: (1) has satisfactorily held a provisional license for at least six months; (2) has no pending proceeding that might result in the suspension or revocation of the license; (3) is at least 17 years of age; and (4) has satisfactorily complied with all requirements to receive a driver's license. If not suspended or revoked, the provisional license shall expire on the date of the provisional licensee's nineteenth birthday.

Q. *When does the provisional driver licensing program take effect and does it sunset?*

A. **Act 72**, takes effect on January 9, 2006 and is repealed on January 9, 2011, to give time to assess the program after a five-year duration. In the meantime, the Department of Transportation and the Department of Health will compile and analyze all relevant traffic and accident data, including accident reports, crash data, and data relating to injuries and fatalities relating to motor vehicle accidents to determine the effectiveness of the graduated provisional licensing program in reducing traffic fatalities and accidents in the State.

LEGISLATIVE ACTION BRIEF

HEALTHCARE

Q. *Healthcare is a priority for most Hawaii residents. Was any legislation passed to improve access to healthcare?*

A. Hawaii is known as the Health State and the Legislature continually strives to improve healthcare access and services for Hawaii residents. This year a measure, HB1304, HD1, SD2, CD1, was passed to establish a temporary healthcare task force to develop a plan to implement healthcare for all Hawaii residents.

Q. *Several organizations are already addressing related issues. Is this a redundant effort?*

A. Several entities have formed and have ongoing efforts in place to address related healthcare issues, such as the Hawaii Uninsured Project, the Vision 2000 Healthcare Congress, and the Governor's Blue Ribbon Panel on Cancer Care in Hawaii, among others. The task force will draw upon these resources in fulfilling its purpose and use the existing work as a starting point for the development of the plan.

Q. *What type of system will the Healthcare Task Force be working on?*

A. The task force will not focus on one plan in particular, but rather will evaluate various options and provide a cost analysis comparing the costs under the status quo with the various options under consideration and make recommendations to decrease Hawaii's uninsured population.

Q. *What agency will oversee the task force?*

A. The task force will be placed within the Insurance Division of the Department of Commerce and Consumer Affairs for administrative purposes. The task force shall consist of thirteen members made up of a balanced representation of interested parties with a majority of the members having experience in healthcare and the healthcare industry. The task force will also include representation from private sector organizations, the Hawaii Uninsured Project, a public union, and a neighbor island. The task force will contract with the Hawaii Uninsured Project to serve as facilitator.

Q. *Will any other agencies be working with the task force?*

A. The task force may request assistance from the Department of Health, the Insurance Division of the Department of Commerce and Consumer Affairs, the Department of Human Services, and other appropriate state agencies to fulfill its purpose. The task force may also request assistance from the public and others in the healthcare field.

Q. *How soon will a plan be available?*

A. The task force will report its findings and recommendations, including any recommended legislation, to the Legislature before the 2006 Regular Session. The recommendations must include a cost analysis and a detailed rationale for implementation.

HIGH TECHNOLOGY INNOVATION CORPORATION

Q. *The development of a thriving commercial high technology industry is often discussed as an important source of economic diversity, growth, and viability for Hawaii, and a source of high-paying jobs for our citizens. What did the Legislature do to support Hawaii's developing high technology industry?*

A. Facilitating and nurturing growth and development are vital to a sustainable commercial high technology industry in Hawaii. The Legislature has passed a measure to establish the not-for-profit High Technology Innovation Corporation (HTIC) as a subsidiary of the High Technology Development Corporation, in order to provide greater flexibility in responding to growth and development potential in Hawaii's rapidly expanding technology sector (**SB1702, SD1, HD2, CD1**).

Q. *Will the State have to expend additional funds for the salaries and benefits given to employees of the High Technology Innovation Corporation?*

A. No. New employees of the HTIC will not be entitled to any benefits conferred by civil service or public employment laws. Moreover, the HTIC employees will not be eligible for participation in state pension and retirement systems and will not receive any benefits conferred by any collective bargaining agreement, executive order, or executive directive. However, an exemption was made for existing officers or employees of the High Technology Development Corporation who transfer to the HTIC so they do not lose any of their current benefits as a result of the transfer.

Q. *What are the benefits of creating a not-for-profit subsidiary to the High Technology Development Corporation?*

A. The High Technology Innovation Corporation (HTIC) will enhance the ability of the High Technology Development Corporation (HTDC) to implement its mission by enabling access to additional funding opportunities. It has become increasingly more important to tap into alternative funding sources to reduce the funding requirements from the State. The HTDC, through the HTIC, will be able to seek and receive grants from foundations, endowments, corporations, and governments, both foreign and domestic, that require funds to flow through a non-profit entity, as opposed to a state agency like the HTDC. Essentially, this measure allows the HTDC the best of both worlds by existing as both a state agency and a non-profit entity.

Q. *Will the same board of directors be in charge of both the High Technology Development Corporation and the High Technology Innovation Corporation?*

A. No. The High Technology Innovation Corporation (HTIC) will be a separate entity from the High Technology Development Corporation (HTDC) and, as such, it will be governed by its own board of directors. Since the two entities are so closely affiliated, four of the nine members of the HTIC board of directors will be selected from among the members of the HTDC board of directors. Four members of the HTIC board of directors shall be appointed by the Governor from members of the general public, from lists provided by the President of the Senate and the Speaker of the House of Representatives, selected on the basis of their knowledge, interest, and proven expertise in one or more of the fields of finance, commerce and trade, corporate management, marketing, economics, engineering, information technology and telecommunications, life sciences, and other high technology fields. The final member of the board shall be the person serving as the executive director and chief executive officer of the High Technology Development Corporation.

LEGISLATIVE ACTION BRIEF

HISTORIC PRESERVATION

Q. *Isn't there already a law governing historic preservation and the removal of historic property and aviation artifacts from public and private lands? Why was a new law necessary?*

A. Previously, the historic preservation law did not sufficiently deter individuals because penalties for violating its provisions were limited to consequential penalties when historic properties were intentionally destroyed. **HB712, HD2, SD2, CD1** adds separate criminal penalties that may be imposed for violations of the historic preservation law, or rules adopted pursuant to its provisions. This measure provides the Department of Land and Natural Resources with a mechanism for effective and timely prosecution of destruction or removal of historic property or aviation artifacts.

Q. *Besides seeking criminal penalties, is there anything else the Department of Land and Natural Resources can do to stop the destruction or removal of historic properties?*

A. The added criminal penalties are not in lieu of the existing civil and administrative violations. The measure clarifies that civil and administrative penalties that may be imposed by any other law will be in addition to the criminal penalties it provides.

Q. *I've read about historic human skeletal remains being unearthed during excavations. What happens to the remains?*

A. All burial sites are significant. This measure makes it a criminal offense for anyone to knowingly fail to stop work and report the discovery in cases where a historic burial site is discovered. No human skeletal remains that appear to be over fifty years old, along with their associated burial goods, shall be moved without the Department of Land and Natural Resources' approval. The appropriate island burial council shall determine within 45 days whether preservation in place or relocation is warranted. Should the burial site be other than Hawaiian, the Department of Land and Natural Resources, within 30 days, shall determine whether preservation in place or relocation is warranted.

LEGISLATIVE ACTION BRIEF

LAND AND NATURAL RESOURCES

Q. Hawaii's natural resources are so important to the economy, culture, and overall quality of life. However, year after year, it seems that there is never enough money allocated to protect and preserve our precious resources. What did the Legislature do this year to adequately fund conservation projects in this State?

A. The Legislature recognizes the value of Hawaii's natural resources and has worked to ensure that these resources will be protected and preserved for future generations. However, funding the conservation projects has always been difficult. Thus, this year the Legislature passed a measure that establishes a permanent funding source dedicated specifically for land conservation (**HB1308, HD1, SD2, CD1**). The measure increases the conveyance tax on a sliding scale, based on the value of the real estate property, and dedicates ten percent of the annual proceeds from the total amount of the conveyance tax collected to the Land Conservation Fund. The Legislature selected the conveyance tax as the funding source for land conservation because as more real estate is developed, sold, and improved, additional pressures are added to our natural areas, coastal access, agricultural production and water resources and watershed recharge areas. This measure also allows the Board of Land and Natural Resources to: (1) acquire interests or rights in land that has value as a resource to the State or (2) make grants from the fund to other state agencies or nonprofit conservation organizations for the preservation of the real property.

Q. Rural districts have not been used widely or effectively. Overall, communities seem to be either urban or agriculture, but recently there has been a lot of interest in living in rural communities rather than modern subdivisions. What did the Legislature do this year to utilize more rural districting?

A. Rural districts are unique communities that offer a glimpse of what Hawaii was like before the advent of modern subdivisions. These communities were more self-contained, neighbors knew each other, and community business was conducted at a personal level. This year, the Legislature passed a measure (**HB109, HD1, SD2, CD1**) that allows counties to work with the Land Use Commission to identify and recommend boundary amendments to expand and enhance the use of rural districts. On many of the islands, land is categorized as agricultural that should be more appropriately classified as rural. Thus, this measure will help to create more rural communities in which citizens will look at their land not just as real estate but as communities.

Q. *There has been an increased concern over legal and illegal gillnetting activities in and around Kahului Harbor and the dwindling numbers of fish in Hawaii's waters. What has the Legislature done to address these problems?*

A. This year, the Legislature passed **HB98, HD2, SD1** to address the conflicts between net fishermen and recreational fishermen in the Kahului Harbor area on the island of Maui. Specifically, this measure prohibits the use of nets in Kahului Harbor except for the recreational fishermen that use throw nets, opae nets, crab nets, or nehu nets for family or bait purposes. This measure considers Native Hawaiian cultural practices and traditions and balances that with the need to protect Hawaii's ocean resources.

Q. *Storing canoes during the racing season is very difficult and there has been talk of allowing canoe clubs store their canoes on the beach. Is that true, and will the storage of the canoes affect public access to the beaches?*

A. Outrigger canoe paddling is the official team sport of Hawaii and has a long historical and cultural importance in this State. Canoe clubs often have difficulty storing and transporting canoes during their racing season. Thus, the Legislature passed **HB125, HD2, SD1, CD1** to allow Hawaiian outrigger canoe clubs registered with established canoe racing associations to keep their outrigger canoes on state shorelines areas during their racing season. The authority to store their canoes on the beach is subject to specific conditions (such as maintaining adequate access to and along the shorelines) and may also require annual state or county permits.

LEGISLATIVE ACTION BRIEF

NURSING SCHOLARS PROGRAM

Q. *The shortage of registered nurses will threaten the health and welfare of Hawaii's citizens. Hawaii's nursing schools are turning away applicants because of the lack of qualified faculty. What did the Legislature do this session to address the shortage of nursing faculty?*

A. The Legislature passed a bill this session (**S.B. No. 116, S.D. 2, H.D. 2, C.D. 1**) that provides for a nursing scholars program, established at the University of Hawaii, to attract baccalaureate-prepared nurses into master's and doctoral programs that will prepare them for academic careers in nursing.

Q. *What does the Nursing Scholars Program allow the University of Hawaii to do?*

A. It allows the University of Hawaii to provide scholarship grants to an eligible student who is a resident of this State and confirmed to have been accepted for enrollment in an approved graduate course of study.

Q. *What are the requirements to receive a scholarship grant?*

A. To receive a scholarship grant under this chapter, a student is required to: (1) have graduated from a recognized nursing program with a bachelor of science in nursing; (2) maintain domicile in Hawaii during the term of the scholarship grants; (3) comply with any conditions placed on the scholarship grant by the University; (4) maintain a grade point average of 3.0 or higher, on a scale of 4.0 or its equivalent; and (5) enter into a written agreement with the University. The agreement is to satisfy all degree requirements and other program requirements; commence nursing instruction in Hawaii within one year after completion of an approved graduate degree in nursing for a period of one year for each academic year the student received a master's or doctoral degree, unless the University determines that there are extenuating circumstances; and reimburse the State for all amounts received and interest thereon, as determined by the University, if the student fails to comply.

Q. *How much is a scholarship grant worth?*

A. The University may award a scholarship grant in an amount up to \$10,000 per academic year to a student enrolled full-time in an approved educational

institution pursuing a degree in nursing through an approved course of study. The grant is for up to three academic years for a master's degree program and four academic years for a doctoral program.

Q. *Upon completion of the Nursing Scholars Program, what requirements will the student need to fulfill?*

A. The student will be required to commence nursing instruction within one year after completion of a degree for a period of one year for each academic year the student received a grant. If the student fails to comply with the requirement, then the student must reimburse the State.

Q. *Did the Legislature require the University of Hawaii to report on the status of the program?*

A. Yes. The University of Hawaii is required to report to the Governor and the Legislature by September 1, 2006, and every year thereafter prior to the convening of each Regular Session.

Q. *What information will be included in the report?*

A. The report will include: (1) the total number of students receiving nursing scholarship grants; (2) the total amount of scholarship grants awarded; (3) the number of full-time and part-time graduate students receiving scholarship grants, reported according to institution of enrollment; (4) the amount of scholarship grants awarded to graduate students, reported according to institution of enrollment; and (5) the total number of graduate students who have withdrawn from the program.

LEGISLATIVE ACTION BRIEF

OCCUPATIONAL LICENSING

Q. *Low mortgage interest rates have spurred activity in the State's home construction and remodeling industries. Did the Legislature take any action to help protect consumers who hire professional and tradespeople employed in these industries?*

A. Yes, the Legislature passed several measures that strengthen the professional and vocational licensing laws in certain design and construction professions. **SB119, SD1 (Act 2, SLH 2005)** establishes continuing education requirements for architects, beginning with those whose licenses expire on 4/30/08. Licensees will be required to complete sixteen hours of continuing education on public protection issues during each licensing biennium as a condition of license renewal, except for licensees who are active duty military members deployed during a state or national crisis, whose illness or disability prevents compliance with the requirement, or who are retired from the practice of architecture.

Another measure, **SB1778, SD2, HD1, CD1**, strengthens the law prohibiting unlicensed contracting by requiring that all citations for unlicensed contracting include an order to cease and desist the illegal activity. The Director of Commerce and Consumer Affairs (DCCA) is authorized to file a lawsuit to enjoin unlicensed contracting and for the imposition of a fine of up to \$10,000 for each offense. Additionally, the Legislature requested DCCA to convene a task force during the legislative interim to review DCCA's current efforts and practices in the enforcement of the State's electrical and plumbing licensing laws, to develop strategies to improve and strengthen these efforts and practices, and to report on the above to the 2006 Legislature (**SCR49, SD1**). The Legislature, in the same resolution, also asked the DCCA to actively and aggressively enforce these laws.

Q. *Despite the prohibition on "no rules" combat and extreme or ultimate fighting contests, these matches continue to be promoted and held in the State. Did the Legislature do anything to improve the administration of the law governing promoters and contestants who stage and participate in these types of matches?*

A. Yes, this session, the Legislature passed a bill to clarify the ban and to establish specific procedures for promoters claiming an exception therefrom. Under **SB768, SD1, HD1 (Act 54, SLH 2005)** the term "no rules combat, extreme or ultimate fighting" has been clarified to mean a match or exhibition performed in the State, in which contestants: (1) are permitted to use a combination of combative contact techniques, including punches, kicks, chokes, joint locks, and other maneuvers, with or without the use of weapons; and (2) have received or are to receive, directly or indirectly, any money, prize, reward, purse, or other

compensation, or promise thereof, for the expenses of training, for taking part in the contest, or for winning the contest.

Additionally, the Act carves out an exception to the ban, for matches: (1) between medically fit and adult contestants who are not disqualified from competing in another jurisdiction at the time of the match or exhibition; (2) pursuant to the promoter's rules or restrictions that protect the safety of contestants; (3) under the direction and control of an adult referee in the ring who has at least one year's experience in refereeing a match or exhibition involving a combination of combative techniques and who has passed a physical examination by a licensed physician, including an eye examination, within two years prior to the match or exhibition; (4) under the medical supervision of a state-licensed physician who is present at ringside; and (5) in a manner that will promote maximum safety for the contestants, to the extent feasible.

Under the Act, a promoter seeking an exemption from the prohibition is required to submit documentation and a \$500 fee to DCCA at least 30 days prior to the match, which the Department must refund if it determines that the match is prohibited. If the match does not fall within the prohibition, the promoter must submit an unedited video of the match to DCCA within 7 days of the match date. The Act retains DCCA's current authority to impose a maximum \$10,000 fine for each offense and explicitly authorizes the Department to sue for injunctive relief and to adopt administrative rules.

- Q. *The State has sometimes been criticized for creating occupational licensing and regulatory programs in contravention of state policy under the Hawaii Regulatory Licensing Reform Act to regulate professions and vocations only where reasonably necessary for consumer protection purposes. Has the Legislature made any effort to address the issues raised by these concerns?***
- A.** Yes, the Legislature adopted a concurrent resolution requesting the Auditor to conduct a comparative analysis of professional and vocational regulation in other states and in Hawaii, that includes a review of educational, testing, experience, and other requirements, and that determines whether these requirements are necessary to protect the health, safety, and welfare of consumers (**HCR156**). This measure further requests the Auditor to submit reports on the analyses to the 2006 and 2007 Legislatures.

LEGISLATIVE ACTION BRIEF

PHARMACY BENEFITS

Q. *Mandatory participation in the new federal Medicare Prescription Drug, Improvement and Modernization Act of 2003 will jeopardize drug benefits for many seniors and disabled people who are living on fixed incomes. Has the Legislature done anything to address this issue?*

A. Some seniors and disabled people are Medicare-eligible and are also Medicaid recipients who currently enjoy one hundred percent drug coverage benefits under Medicaid. However, with mandatory participation under the new federal Act, these individuals will lose their current level of drug coverage. The Legislature responded by passing SB802, SD2, HD1, CD1, which establishes a State Pharmacy Assistance Program to help current Medicaid recipients retain more of their current drug benefits as well as increases the population of Medicare individuals who may take advantage of this drug benefit.

Q. *How does the program work?*

A. The program requires the Department of Human Services (DHS) to allow any willing prescription drug plan approved and certified by the federal Centers for Medicare and Medicaid Services to provide the coordination of benefits between the State's Medicare Prescription Drug Program and the Medicare part D prescription drug benefit. If there are no such plans, the program may coordinate the benefits. The program also allows DHS to provide certain pharmaceutical benefits to eligible elderly and disabled individuals. DHS will also be able to provide enrollment assistance to eligible individuals.

Q. *Who is paying for the pharmaceutical benefits being offered to eligible individuals?*

A. The State Pharmacy Assistance Program is funded by rebates. The measure allows DHS to enter into rebate agreements with prescription drug manufacturers or labelers that sell prescription drugs in the State. DHS can negotiate the amount of the rebate and must try to obtain the best possible rebate amount. The program may pay all or some of the co-payments required under the federal Medicare part D Pharmacy Benefit Program but only if it receives sufficient revenue from the rebates.

Q. *Who is eligible for this program?*

- A.** The program is available to residents of the State who are sixty-five or older, or are disabled and receiving a social security benefit, if they meet the income and asset criteria and are not ineligible for other reasons. Individuals who are members of a retirement plan and who are receiving a benefit from the Medicare Modernization Act are ineligible for the program. An individual is also excluded from the program if the individual is enrolled in another public assistance program that provides pharmaceutical benefits, other than the Medicare Modernization Act, as long as the individual receives pharmaceutical benefits from the other public assistance program, unless the applicant is eligible for Medicare. Individuals who are enrolled in a private sector plan or insurance that provides payments for prescription drugs are also excluded.

Residents who qualify for or are enrolled in the Hawaii Rx Plus Program are eligible if they meet all of the other State Pharmacy Assistance Program requirements.

LEGISLATIVE ACTION BRIEF

PSEUDOEPHEDRINE

Q. *There has been some recent publicity about regulating the sale of cold remedies and allergy medications. Why?*

A. Crystal methamphetamine, or "ice" as it is commonly called, is the most abused drug in the State and can be manufactured using common household items. This has led to the rapid and widespread increase of covert methamphetamine "labs" throughout the State, typically in kitchens, garages, and hotel rooms. One of the primary precursor chemicals used in the manufacturing of methamphetamine is pseudoephedrine, which is readily available in some over-the-counter cold remedies and allergy medications.

The illegal use of ice is at the root of many of the State's societal problems, including violent crime, child abuse and neglect, and property theft. In addition to endangering the public through the production and introduction of illegal drugs into communities, the covert methamphetamine labs also pose a threat to public health and safety due to risks of fire, explosions, and toxic exposure associated with their operation.

Q. *Did the Legislature do anything to address this issue?*

A. The Legislature approved a measure to reduce the amount of pseudoephedrine products that can be diverted to the covert labs (**SB1100, SD2, HD1, CD1**). The measure requires any person transporting more than three packages of any restricted pseudoephedrine product to obtain a pseudoephedrine permit from the Department of Public Safety. The measure also prohibits pharmacies and retailers from selling, or distributing without a prescription more than three packages or not more than nine grams per transaction of pseudoephedrine products.

Q. *Is there any penalty under the measure for transporting more than three packages of a restricted pseudoephedrine product without a permit?*

A. Yes. Under the measure, the unlawful transport of pseudoephedrine is a misdemeanor.

Q. Does this mean that consumers will need a prescription for these cold medicines and allergy medications?

A. A prescription is not necessary unless the consumer wants to acquire more than three packages or more than nine grams per transaction.

Q. What will prevent a methamphetamine lab from having someone steal pseudoephedrine products off the shelves?

A. In order to dispense the allowable amount of pseudoephedrine products without a prescription, pharmacies and retailers must take certain precautions. The pseudoephedrine products must be distributed from an area that is in the direct line of sight of an employee at the check-out station or counter under constant video monitoring with signage placed near the drug that warns that the area is under constant video monitoring or not accessible by customers or the general public, such as behind the counter or in a locked display case.

Q. What about pseudoephedrine products that are not used in the illegal manufacture of methamphetamine or other controlled substances?

A. The measure does not apply to pseudoephedrine products that are in liquid, liquid capsule, or gel capsule form if pseudoephedrine is not the only active ingredient. Also, the measure permits the Department of Public Safety to exempt other products, including extended-release pseudoephedrine combination products, if the Administrator finds that the products are not used in the illegal manufacture of methamphetamine or other controlled substances. Manufacturers may apply for removal of a product from restriction if it is determined that the product is formulated in such a way as to effectively prevent the active ingredient from being converted into methamphetamine.

Q. Was anything else done to prevent the diversion of pseudoephedrine products to covert methamphetamine labs?

A. The Legislature also included a provision in the measure that requires every wholesaler to report to the Administrator of the Department of Public Safety all sales made to any retailer, of any product, mixture, or preparation containing any detectable quantity of pseudoephedrine. This will enable the Department to track who is, or how many retail vendors are, currently selling pseudoephedrine products. It also facilitates tracking the amount of pseudoephedrine products currently available.

SEX OFFENDER REGISTRY AND PUBLIC ACCESS

Q. *In 2004, Hawaii voters approved a constitutional amendment that provided that the public has a right of access to registration information regarding persons convicted of certain offenses against children as well as persons convicted of certain sexual offenses. This amendment also enabled the Legislature to determine which offenses and offenders are subject to registration, the level and type of information to be disclosed to the public, the manner of public access, and the duration of registration and public access requirements. What did the Legislature do to fulfill this constitutional mandate?*

A. The Legislature enacted Hawaii's version of "Megan's law" (**SB708, SD2, HD2, CD1; Act 45**) which balances the rights of sex offenders with the right of the public to access pertinent information concerning these offenders. This measure establishes separate registries for sex offenders and offenders against children as well as clarifies both the type and scope of registration information that must be provided by a sex offender. This measure also establishes specific registration periods and corresponding levels of public access to offenders' information that are applicable to certain categories of sex offenders. This measure permits the early termination of registration and public access requirements, subject to judicial approval, after a hearing has been held on the offender's petition and the offender is able to satisfy specific statutory criteria. Additionally, a sex offender is able to petition the court once every five years for early termination of registration and public access requirements. This measure also clarifies the continuing obligation of the sex offender to provide or update registration information.

Q. *Describe the registration periods for certain categories of sex offenders and the process that exists whereby a sex offender may apply for early termination of registration requirements.*

A. Sex offenders convicted of class A, B, or C felony offenses are required to register with the Attorney General for specified periods of time, unless the offender is a sexually violent predator, a repeat covered offender, or an aggravated sex offender which requires lifetime registration. The class of felony offense that the offender was convicted of also determines the minimum period of registration that must be satisfied before an offender is able to file a motion for termination of registration requirements. An offender convicted of a class A felony must be registered with the State for a minimum of 25 years, an offender convicted of a class B felony must be registered with the State for a minimum of 15 years, and an offender convicted of a class C felony must be registered with the State for a minimum of 10 years.

To terminate registration requirements, the sex offender must file a petition in a civil hearing before a judge. At this hearing, the sex offender must demonstrate that: (1) he or she is not a sexually violent predator, an aggravated sex offender, or a repeat covered offender; (2) he or she has substantially complied with registration requirements for the applicable minimum time period; and (3) registration is no longer necessary for the protection of the public. Prior to terminating registration requirements, a judge is required to make a determination as to whether the offender is a sexually violent predator.

Q. *What type of safeguards exist to ensure that sexually violent predators are required to register for life?*

A. Sexually violent predators are defined under this measure as individuals who are sex offenders and suffer from a mental abnormality or personality disorder that makes the person more likely to engaged in predatory sexual offenses. This class of sex offender is required to register for life. Moreover, before any sex offender is able to terminate registration requirements, a judge is required to determine in a civil proceeding based, in part, upon the recommendations of a board convened by the Chief Justice of the Hawaii Supreme Court and comprised of experts in the behavior and treatment of sex offenders, victims' rights advocates, and representatives from law enforcement agencies, whether the offender is a sexually violent predator.

Q. *Why are certain sex offenders subject to lifetime registration while others are given different registration periods?*

A. Under federal law, certain types of offenders, such as sexually violent predators, must be registered for life. Compliance with this requirement enables the State to remain eligible to receive federal funding for law enforcement initiatives in this area.

Q. *If I want to know if a sex offender lives in my neighborhood, how quickly will this information be available?*

A. Public access to an offender's public information commences the next working day following the filing of a judgment of conviction, a finding of unfitness to proceed, or an acquittal due to mental disease, disorder, or defect. Public access ceases upon the reversal of a conviction, the granting of a pardon to the offender, the expiration of a statutorily established time period for public access, or upon the successful petition for termination of public access by an offender.

Q. *What type of public information about a sex offender is available to the public?*

A. Public information about a sex offender includes: (1) the name and all prior names or aliases used by the offender; (2) the actual address of the offender's residence as well as the length of residence; (3) the actual address where the offender is staying for more than ten days; (4) the future actual address, if known, where the offender is planning to reside; (5) the street name and zip code of the offender's current location of employment; (6) the name and actual address of all current and future educational institutions that the offender is affiliated with in any way; (7) the year, make, model, color, and license number of all vehicles owned or operated by the offender; (8) a statement listing all relevant and applicable offenses for which the covered offender was convicted of or found unfit to proceed; and (9) a recent photograph of the offender.

Q. *What are the forms of public access available to view public information about an offender and does it differ based upon the type of sex offender?*

A. Public access to identifying information about a sex offender is provided either through on-site public access at designated police stations in each county or through the Internet. Public access through the Internet and on-site public access are required for the following offenders: (1) sexually violent predators; (2) repeat covered offenders; (3) individuals convicted of aggravated sexual offenses; (4) individuals convicted of a class A felony; and (5) individuals convicted of a class B felony or a conviction for sexual assault in the first degree of an individual at least 14 years of age, but under 16 years of age. For all other sex offenders that do not fall within these categories, public access shall be on-site at designated police stations, subject to hours of operations.

Q. *Describe the types of continuing registration requirements enacted by the Legislature to ensure that sex offenders update registration information?*

A. The Legislature broadened the criminal offense of failure to comply with covered offender registration requirements by including when an offender fails to mail or deliver the periodic verification of registration information form to the Attorney General within ten days of receipt.

LEGISLATIVE ACTION BRIEF

SMALL BUSINESS

Q. *Small business plays an important role in Hawaii's economy. Did the Legislature pass any measures that improve the regulation and promotion of small businesses in the State?*

A. The Legislature passed a measure that directs the State Procurement Policy Board to adopt administrative rules to promote the growth and development of Hawaii's small businesses (**HB162, HD2, SD1, CD1**). The measure directs a revision of the evaluation criteria used to award state and county contracts to include consideration for the effective use of small businesses as subcontractors for large contracts. The Legislature also passed a measure that instructs a permanent state cultural public market in the Kakaako Makai area of Oahu (**SB1721, SD2, HD2, CD1**).

Q. *How will the new procurement rules benefit Hawaii's small businesses?*

A. The new rules will require "set asides" of state and county contracts that small businesses are capable of performing. This will help ensure that a fair and representative share of the state and county government procurement contracts for goods and services that are awarded to private firms are placed with small businesses. These small business preferences will benefit small businesses by providing opportunities to develop the skills and economic strength necessary to successfully compete for government contracts, as well as private sector projects.

Q. *What is a "set aside"?*

A. A "set aside" is a procurement contract for which only small businesses may compete. This initiative is designed to enable and encourage the participation of small businesses in this market. Small business set asides have been used successfully by the United States Small Business Administration for federal government procurement contracts.

Q. *How else does HB162 assist Hawaii's small businesses?*

A. The measure also directs a revision of the evaluation criteria used to determine awards of state and county contracts to include consideration of the effective

use of small businesses as subcontractors. This creates an incentive to hire small businesses as subcontractors on large government contracts, thereby creating additional opportunities for small businesses in the public sector and enabling small businesses to gain valuable experience with large government contracts, which they could not achieve on their own.

Q. *Why redefine "small business" now?*

A. The State Procurement Policy Board is directed to change the statutory definition of "small business" to promote uniformity with the definition used by the United States Small Business Administration, and other small business associations and programs.

Q. *Is the permanent cultural public market in SB1721 the same as a farmers' market?*

A. Although one component of a cultural public market is a market-style retailing venue for local farmers, it will also provide a single location in which to showcase the rich cultural diversity of the people of Hawaii, with a spotlight on the host Hawaiian culture. Specifically, the public market will provide a venue for the:

- Exposure, education, and awareness of the diverse ethnic groups in Hawaii;
- Sale of ethnic foods, produce, and products;
- Exhibition and showcasing of cultural artwork and crafts;
- Showcasing of entertainers and artists; and
- Presentation of information on the culture and history of the various ethnic groups in Hawaii.

Q. *How will a permanent cultural market help small businesses?*

A. The cultural market will stimulate business and commercial activities, particularly for local farmers, small businesses, manufacturers, artists, and entertainers. It will help entrepreneurs because the rents will be set at an affordable rate. The cultural market is intended to be a gathering place for the local community and visitors alike that will provide an outlet for the exhibition and showcasing of cultural artwork and crafts, the sale of ethnic foods, produce, and products, and spotlight entertainers and artists, with an emphasis on the Hawaiian culture. Merchants and customers will be brought together in a permanent marketplace for our farmers, fishers, artisans, hula, entertainers, and restaurant vendors.

TEMPORARY ASSISTANCE FOR NEEDY FAMILIES FUNDS

Q. *There has been some recent publicity about how the Temporary Assistance for Needy Families (TANF) moneys were diverted from their intended purposes and used to fund programs such as the anti-drug and anti-alcohol program campaign instead of funding low income individuals to assist them with food, cash and health benefits. Specifically, what has been the problem with Hawaii in regard to TANF moneys?*

A. The primary issue is how the administration has been using TANF funds. TANF funds come with restrictions. These federal grants can be used for providing aid to needy families, promoting self-sufficiency through job training or marriage, preventing unwanted pregnancies, and encouraging two-parent families. States can divert up to 30% of the moneys to childcare and social service programs or keep some money in reserve. The reserve is intended as a cushion if welfare caseloads unexpectedly swell. The administration has been moving more incoming federal money into childcare and social service programs, and the State has been reportedly tapping greater portions of the reserve over the past few years. The reserve was at \$118,000,000 as of the end of March.

The administration has been criticized for using more than \$513,000 in federal money for an anti-drug media campaign, and \$625,000 to replace state money that was cut from state culture and arts programs (justified as a creative attempt to reach at-risk and low-income young people). A current audit is being conducted by the U.S. Department of Health and Human Services to review whether the State has been spending its federal welfare money properly, and the State could face penalties for any mistakes. The Legislature saw the need for oversight to ensure that TANF funds were spent appropriately, and accordingly passed **HB140, HD1, SD2, CD1**.

Q. *This measure seems unnecessary, as the Department of Human Services has the administrative authority and expertise to administer TANF funds. Why is the Legislature second-guessing the Administration?*

A. States are required to report quarterly on the amount of money they spend. These reports need to be carefully scrutinized to ensure that appropriated moneys do not go unspent. If a state fails to obligate money by October 1 of each year, the state loses flexibility on spending those funds under federal law. Legislative oversight will help ensure that this does not happen.

Evaluations can provide the Legislature and department with specific and accurate details concerning how welfare reform is working. It also affords a

critical opportunity for mid-course correction by identifying unintended consequences, newly identified needs, and areas for expansion and innovation.

Q. *How will the Legislature know how TANF funds are spent?*

A. **HB140** requires the Department of Human Services, within the limits of confidentiality laws, to make all data on TANF funds available to the Senate and House of Representatives committees having jurisdiction over fiscal, health, and human services issues, upon request. The committees are then required to jointly evaluate the implementation of the state TANF program and program expenditures, and make annual recommendations for appropriations.

Q. *How can the Legislature ensure that the Department of Human Services is fulfilling its mandate under TANF?*

A.The Legislature may conduct hearings to receive public comment relating to the implementation of the state temporary assistance for needy families program and the optimal expenditure of program funds. The Legislature is required to determine the number and timing of hearings to be held. If hearings are held, no fewer than one hearing on each island of the State will be held annually. The Senate and House committees having primary jurisdiction over fiscal, health, and human services matters will jointly conduct the public hearings.

LEGISLATIVE ACTION BRIEF

TOBACCO

Q. *Access to tobacco products is a significant factor in determining whether a minor will ever smoke or experiment with tobacco. What has the Legislature done to reduce youth access to tobacco products?*

A. The most common way for a minor to acquire tobacco products is through a retail business. The Legislature passed a measure, **SB682, SD2, HD3, CD1**, to improve tobacco regulation by requiring retailers that sell cigarettes or other tobacco products to obtain a retail tobacco permit from the Department of Taxation.

Q. *What effect will a retail tobacco permit have on youth access to tobacco products?*

A. At present, it is not possible to know who or how many retail vendors are currently selling tobacco products. A retail tobacco permit will provide a known and measurable list of entities engaged in the retail sale of cigarettes and other tobacco products. This will enhance enforcement of the current law.

Q. *Does a retailer need to do anything other than obtain a permit?*

A. In addition to the permit, retailers are required to keep a complete and accurate record of their tobacco product inventory including information regarding the source of their tobacco products, the date of delivery, price, and proof of purchase. Retailers are also prohibited from purchasing any pack of cigarettes that does not have the appropriate tax stamp on the bottom.

Q. *Why does a retailer need to keep all of this information?*

A. The record-keeping requirement of the measure provides a tool to deal with counterfeit stamped products and counterfeit cigarettes and enhances enforcement of the cigarette tax law.

Q. *What about cigarettes or other tobacco products sold at vending machines or out of vehicles?*

A. Sales of cigarettes or other tobacco products from a vending machine are subject to the same terms, conditions, and penalties as other retailers. A vehicle from which cigarettes or tobacco products are sold requires a retail tobacco permit bearing a specific motor vehicle identification number and must be carried in the vehicle having the corresponding number.

Q. *Are there any penalties for failing to obtain a valid retail tobacco permit?*

A. Yes, unlawful tobacco retailing is a crime. However, the Legislature considered that some retailers may be unaware of the law and provided for various degrees of the offense.

A person commits the offense of unlawful tobacco retailing in the first degree if the person knowingly fails to obtain a valid permit and for purposes of retail sale, recklessly sells, possesses, stores, acquires, distributes, or transports five thousand or more cigarettes. Unlawful tobacco retailing in the first degree is a misdemeanor. However, if the person commits the same offense within five years of a prior conviction, it is elevated to a class C felony.

A person commits the offense of unlawful tobacco retailing in the second degree if the person recklessly fails to obtain a valid permit and for purposes of retail sale, recklessly sells, possesses, stores, acquires, distributes, or transports five thousand or more cigarettes. Unlawful tobacco retailing in the second degree is a petty misdemeanor. However, if the person commits the same offense within five years of a prior conviction, it is elevated to a misdemeanor.

Q. *What if a person obtains a retail tobacco permit but fails to comply with administrative rules or obtains the permit in a fraudulent way?*

A. The measure allows the Department of Taxation to suspend, revoke or decline to renew a retail tobacco permit if it finds that the person or entity failed to comply with the law or administrative rules, or for any other good cause.

The measure also amends current law to give the department the same authority over a license held by a wholesaler or dealer of cigarettes or tobacco products.

- Q.** *Can the department's decision to suspend, revoke, or decline to renew a permit or license be challenged?*
- A.** The department must notify the person or entity immediately whenever it suspends, revokes, or declines to renew a permit or license, and the person or entity is entitled to a hearing.

LEGISLATIVE ACTION BRIEF

TOURISM

Q. *Tourism is one of the major economic engines for the State of Hawaii. What did the Legislature do this year to promote tourism and to make the Hawaii Tourism Authority (HTA) more efficient?*

A. The State's investment in tourism is critical to ensure that Hawaii maintains a successful and sustainable tourism industry. To this end, it is imperative that the HTA be given additional resources to effectively and efficiently implement its programs, which will contribute to an increased focus in areas such as safety and security, workforce development, communications, and state parks and trails **(SB1729, SD2, HD2, CD1)**.

Q. *The HTA is charged with the responsibility to promote tourism. How has its funding been enhanced?*

A. The HTA provides funding for various visitor assistance programs. Moneys from these programs are derived in part from the transient accommodations tax (TAT). Effective July 1, 2007, the allocations of TAT revenues will be modified so that 34.2 percent (increased from 32.6 percent) of the TAT revenues will be deposited into the tourism special fund which is used for the purposes of the HTA. In addition, the cap on the maximum yearly revenue of \$62,292,000 will be repealed.

Q. *How will funding for state parks and the Hawaii statewide trail and access program be affected?*

A. Currently, 90 percent of TAT revenues deposited into the tourism special fund in excess of \$62,292,000 is deposited into the state parks special fund, and the remaining 10 percent is deposited into the special land and development fund. The combined deposits into those funds are limited to \$1,000,000 in any fiscal year. Beginning July 1, 2007, this formula is changed so that the first \$1,000,000 of TAT revenue deposited into the tourism special fund will be deposited into the state parks special fund (90 percent) and into the statewide trails and access program (10 percent). This ensures timely receipt of money for state parks and the statewide trail and access program, as this money will come from the first \$1,000,000, not the last.

Q. *Why repeal the TAT trust fund?*

- A.** The purpose of the TAT trust fund is to serve as a holding account for TAT revenues to supplement shortfalls in the tourism special fund, if the fund does not receive \$63,292,000 in TAT revenues. In effect, this guaranteed a minimum of \$62,292,000 in TAT revenues for the benefit of the HTA. However, with tourism picking up and with the future increase in deposits into the tourism special fund for the benefit of the HTA, the TAT trust fund will no longer be necessary. Therefore, the current 5.3 per cent of TAT revenues deposited into the TAT trust fund will be repealed, effective July 1, 2007.

Q. *How will tourist safety and security be enhanced?*

- A.** For the first time, beginning July 1, 2007, there will be dedicated funding for safety and security programs. Of the 34.2 percent of TAT revenues deposited into the tourism special fund, 0.5 percent will be transferred to a sub-account in the tourism special fund to provide funding for a safety and security budget, in accordance with the Hawaii Tourism Strategic Plan 2005-2015.

TSUNAMI PREPAREDNESS

Q. *The growing population of the State and the general lack of awareness on the part of the public with respect to natural disaster preparedness makes for potentially devastating consequences in case a natural disaster strikes. What is the current state of affairs with regards to the State's tsunami preparedness?*

A. Tsunamis are Hawaii's number one natural disaster killer and a year-round threat. In the 20th century, eight destructive distant tsunamis from the Pacific Rim, and one locally generated Big Island tsunami, killed 222 people, injured hundreds, and caused millions of dollars in property damage. Today, Hawaii's densely populated and developed coastlines are at significant risk.

Due to Hawaii's experience with tsunamis and hurricanes, a disaster alert system is in place providing early warning to residents. Even with this comprehensive, state-of-the-art-monitoring system in place, Hawaii's disaster warning efforts have not kept pace. Antiquated siren systems, outdated evacuation maps in telephone books, insufficient shelter space, limited public education projects, and a lack of around-the-clock alert staff mean Hawaii residents may lose critical seconds in evacuation time or, worse, be unable to access emergency care and shelter in the event a disaster strikes.

Q. *What did the Legislature do to remedy this threat to life and property?*

A. **S.B. No. 960, HD1, CD1**, appropriates to the State Department of Defense, which has responsibility for civil defense, the sum of \$4,000,000 (\$2,000,000 in each fiscal year) for natural disaster preparedness efforts, including installing and maintaining new siren systems; updating evacuation maps in phone books; constructing additional shelter space and retrofitting existing public buildings that could serve as emergency shelters; developing statewide residential safe room design standards by January 1, 2006; providing around-the-clock alert staff for the Civil Defense Division; and expanding public education campaigns that emphasize the need for natural disaster, including tsunami and hurricane preparedness.

Q. *What is the importance of tsunami evacuation maps?*

A. Tsunami evacuation maps were first published in the front of the telephone books in 1991, based on one-dimensional tsunami scientific modeling techniques. Tsunami evacuation maps are drawn further inland of tsunami inundation maps along major highways. In early 2004, the State Civil Defense

(civil defense) initiated contracts with the University of Hawaii and the Department of Land and Natural Resources to update tsunami evacuation maps using the latest two-dimensional tsunami inundation modeling technology, targeting complex coastlines, bays, harbors, and marinas. The two-dimensional modeling is suited for curved coastlines because it takes into account both wave movement heading directly towards the shoreline and lateral movement up and down a shoreline. The accuracy of these maps is important as residents rely on them in deciding where to seek shelter during a tsunami warning.

Q. *What is the progress of updating the tsunami maps?*

- A.** At current levels of federal funding (\$153,000 annually), completion of targeted coastlines will take five to ten years. Updating the maps for the remaining populated coastlines throughout Hawaii will take an additional ten to fifteen years. The cost of acquiring specific topographic elevation data alone for the two-dimensional modeling can cost hundreds of thousands of dollars. Reviewing and updating of natural hazard maps is a routine scientific practice when new technology and additional field data become available. The appropriation contained in this bill will accelerate the updating of the maps.

Q. *The number of emergency shelter space is very limited. What does this bill do to address that shortage?*

- A.** The bill provides funds for retrofitting of school buildings to increase the number of emergency shelter spaces in the State by 19,400. In a 1998 survey, civil defense identified a shelter shortfall of 175,000 spaces. Since then, the shortfall has been reduced to 124,000 spaces. Civil defense will coordinate the retrofit activities with other state agencies and with the four county civil defense agencies to undertake the retrofitting.

Q. *Why is the additional civil defense staffing necessary?*

- A.** The added staffing will provide the State Emergency Operating Center with a 24-hour, seven days a week watch capability. This capability is important to provide real-time threat information monitoring and dissemination, as well as early warning for natural and man-made hazards including terrorism attack.

Q. *Why is there a need for the public education campaign?*

- A.** The Hawaiian Islands face a number of natural hazards in addition to tsunamis. These include hurricanes, earthquakes, volcanic eruptions, floods, and high surf. Hawaii residents and tourists need to be made aware of the various hazards and

specific safety actions that must be taken to protect life and property. Although the bill emphasizes tsunami preparedness, in effect it encompasses all hazards, natural and man-made.

Q. What is the loss mitigation grant program and how is it affected by this bill?

- A.** The loss mitigation grant program is administered by the State Insurance Commissioner. It provides grants or payments to reimburse homeowners for actions taken by homeowners to reduce losses that may result from a hazard, including installation of wind resistive devices. This bill reduces the level of reimbursement from 50 percent to 30 percent, but the maximum amount of \$2,100 is unchanged. However, in addition to wind resistive devices, a homeowner can now be reimbursed for residential safe room designs that meet standards established by the State Department of Defense.

An appropriation of \$4,000,000 (\$2,000,000 in each fiscal year) is made from the hurricane reserve trust fund for deposit into the loss mitigation grant fund to pay for grants to reimburse for the installation of wind resistive devices or residential safe room designs.

**UNIVERSITY OF HAWAII BOARD OF REGENTS
& CANDIDATE ADVISORY COUNCIL**

Q. *I heard the Legislature has proposed a constitutional amendment to modify the appointment process for the Board of Regents. What is the amendment?*

A. At present, the members of the Board of Regents of the University of Hawaii are nominated by the Governor and confirmed by and with the advice and consent of the Senate. In addition to this process, there will be a candidate advisory council that will present a pool of qualified candidates to the Governor, who in turn will nominate and appoint one individual from this group. There were two measures passed to this effect, one a constitutional amendment (**SB1256, HD1**) and the other a conforming statutory amendment (**SB1257, SD2, HD2 CD1**).

The constitutional amendment provides that the Governor appoints the members of the Board of Regents from pools of qualified candidates presented to the Governor by the candidate advisory council, as provided by law. These changes will not take place unless ratified by the voters in the 2006 general election.

The conforming statutory amendment establishes the candidate advisory council for the Board of Regents and their duties to assist the Governor in selecting members of the board by establishing criteria for, screening, and recommending qualified candidates for membership. The council will recommend at least two and no more than four candidates for each seat on the board within 30 days of a vacancy or 120 days prior to the expiration of a term.

Q. *What effect does this change have on the current nomination and appointment process?*

A. The current process allows the Governor to nominate any individual, which includes those who may not necessarily be qualified for the regent position. The change in the appointment process allows the candidate advisory council to screen and propose qualified candidates for membership on the board.

Q. *What is the justification for the candidate advisory council?*

A. The present system of direct nomination of members of the Board of Regents by the Governor has the potential for being overly political and thus interfering with

the desire of the Legislature to increase the autonomy of the University of Hawaii system. In addition to increasing autonomy, narrowing the choice of nominees to a list of individuals who have been carefully chosen by a knowledgeable candidate advisory council representing diverse interests and concerns of the people of Hawaii would assist in modernizing the University's governance and strengthening the selection process by providing an independent screening body to identify outstanding candidates.

Q. *How will the candidate advisory committee recommend candidates to the Governor?*

- A.** In making its recommendation, the council is required to: (1) develop a statement of the selection criteria to be applied and a description of the responsibilities and duties of a member of the board and distribute this statement to potential candidates; (2) for each position on the board, screen and qualify candidates based on their background, experience, and potential for discharging the responsibilities of a member of the board; (3) publicly advertise pending vacancies and actively solicit and accept applications from potential candidates; (4) develop and implement a fair, independent, and nonpartisan procedure for selecting candidates to serve on the board; and (5) require the candidate to disclose any existing or anticipated contracts with the University of Hawaii or any existing or anticipated financial transactions with the University.

Q. *What is the composition of the candidate advisory council?*

- A.** The advisory council will consist of seven members selected in a nonpartisan manner. One member will be appointed by each of the following: the Governor, the President of the Senate, the Speaker of the House of Representatives, the All Campus Council of Faculty Senate Chairpersons of the University of Hawaii, the University of Hawaii Student Caucus, the Association of Emeritus Regents, and the University of Hawaii Alumni Association.

Q. *Was the composition of the Board of Regents also changed?*

- A.** On recommendation in testimony of the University of Hawaii, the number of members was increased to enable the board to have a division of labor, through a committee system, to make their responsibilities more manageable. In Hawaii, the board serves not only as the governing board for each of the ten public campuses, but also is responsible for statewide planning and coordinating functions. Another important consideration for increasing the board size was the difficulty of the current board in obtaining a quorum for voting.

Q. *What is the new make-up of the Board?*

- A.** There will be fifteen members, an increase from twelve, for a term of five years with a limit of two consecutive five-year terms. At least ten of the members, except for the student member, are to represent certain geographic areas of the State. If a member is to be appointed to a second term of five years, the Senate will consider the question of whether to reconfirm the member at least 120 days prior to the conclusion of a member's first five-year term. The term of the student member will remain at two years. Unlike the candidate advisory council, which will become effective only upon the ratification of a constitutional amendment, the changes to the composition and tenure of the Board of Regents will take effect on July 1, 2007, if **SB1257** becomes law.

**VOLUNTARY EMPLOYEES' BENEFICIARY
ASSOCIATION TRUSTS**

Q. *I am a public employee and the cost of my medical insurance keeps rising, even though the State moved to the Hawaii employer-union health benefits trust fund (EUTF) last year. Has anything been done to address these rising costs?*

A. This year, the Legislature passed **HB1608, HD1, SD2, CD1**, which authorizes the establishment of a pilot program for voluntary employees' association beneficiary (VEBA) trusts to address the escalating costs of health care coverage for state employees.

Q. *How will VEBA trusts benefit public employees?*

A. VEBA trusts will allow an employee organization to provide better benefits to its members at a lower cost than a single, larger group. Therefore, the cost of health care coverage can be decreased and benefits may be altered and increased to more adequately provide for the members of the employee organization.

Q. *How will the establishment of a VEBA trust benefit the State?*

A. The State, as the employer, will be better able to recruit and retain qualified individuals by providing more attractive benefits packages through the provision of affordable health care coverage. This is particularly true in the case of professions where the State is currently experiencing a shortage of qualified individuals, should the employee organizations for those types of positions establish a VEBA trust.

Q. *How will my status as a member of the EUTF be affected?*

A. If your employee organization establishes a VEBA trust, you will no longer be a member of the EUTF. If you are a retiree of a bargaining unit whose employee organization establishes a VEBA trust subsequent to your retirement, you may elect to participate in the VEBA trust.

Q. *What will happen to the EUTF?*

A. The EUTF will continue to exist and provide health care coverage to public employees whose employee organization does not establish a VEBA trust. Participation in the EUTF will still ensure health care coverage as it has in the last fiscal year of operation.

Q. *How long is the VEBA pilot program?*

A. The VEBA trusts are authorized as a pilot program for a period of three years in order to assess their efficacy to determine whether they should continue, whether the EUTF should continue, or if the system should otherwise be altered.

LEGISLATIVE ACTION BRIEF

WORKERS' COMPENSATION

Q. *I keep hearing that workers' compensation reform is desperately needed in Hawaii. Did the Legislature do anything to improve the workers' compensation system?*

A. Concerned with the actions of the Executive Branch in attempting to circumvent the legislative process, the Legislature passed **SB1808, SD1, HD1, CD1**, which seeks to protect the balance created by legislation between the interests of injured workers and their employers and carriers, and to protect the integrity of the separation of powers between the Legislature and the Executive Branch. The measure also amends certain provisions for further refinement of the law and the system.

Q. *What does SB1808, SD1, HD1, CD1 do to change the current workers' compensation law?*

A. This measure in many ways preserves the current law in that it codifies the administrative rules relating to workers' compensation law, prior to their recent amendment effective May 12, 2005. This measure incorporates into chapter 386, Hawaii Revised Statutes, the substantive definitions, standards, criteria, and policies in effect on January 1, 2005 under currently existing rules and regulations, policies, and case law in the relevant substantive areas in order to preserve and protect the prerogative of the legislative branch of government and to prevent the abuse of power. This measure also appropriately provides for adequate care and assistance for injured individuals, through appropriate vocational rehabilitation, in order for them to return to gainful employment. Furthermore, the measure successfully clarifies issues of discovery, places reasonable limits on the amount of information required to be furnished by treating physicians, provides guidance on the award of attorney's fees, limits the Director's rulemaking authority to ensure that the current rules are maintained, authorizes the Insurance Commissioner to investigate and prosecute complaints of workers' compensation fraud, and adds language relating to parties successfully bringing a claim of fraud.

- Q. *Why is the Director of Labor and Industrial Relations stripped of the authority to make rule changes regarding workers' compensation law?***
- A.** During the 2004 legislative session, the Administration introduced an Omnibus Workers' Compensation Bill, which threatened the balance of interested parties that had previously been achieved under the system. This year, the Administration sought to accomplish the same type of reform as under the 2004 omnibus bill; however, the changes that they sought to be made were done outside of the legislative process and instead through administrative rule changes. As previously stated, the Legislature has sought to ensure that the interests of workers, employers, and carriers are both protected and balanced. The attempt to circumvent the legislative process troubled the Legislature, thereby necessitating a suspension of the Director's rulemaking authority for a reasonable period of time. The moratorium on rule changes will expire on July 1, 2007.